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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

DARRYL MASON, JR., an individual,

Case No.: 3:22-cv-00798 AR

PLAINTIFF,

NOTICE OF SETTLEMENT

v.

CITY OF PORTLAND, a municipal corporation, PORTLAND POLICE DEPARTMENT, a municipal department,

DEFENDANTS.

Pursuant to ORS 17.095, the City of Portland notifies the Court that this action has been settled pursuant to the terms of a Release and Hold Harmless Agreement, a copy of which is attached hereto as *Exhibit 1*.

Dated: July 14, 2022

Respectfully submitted,

/s/Mallory R. Beebe
MALLORY R. BEEBE, OSB # 115138
Deputy City Attorney
Telephone: (503) 823-4047
Of Attorneys for Defendants

RELEASE AND HOLD HARMLESS AGREEMENT AND COVENANT NOT TO SUE

I

FOR THE SOLE CONSIDERATION of the sum of five thousand dollars (\$5,000.00), the undersigned/Covenantor Darryl Mason, Jr. hereby releases and forever discharges the City of Portland/Covenantee, its agents, officers, employees, officials, and all other persons, firms, corporations or other entities liable or who might be claimed to be liable (hereafter "the City of Portland") from any and all claims for damages and/or injuries from or relating to the events near SW 4th and Salmon, occurring on or about June 2, 2020, in Portland, Oregon as alleged in Plaintiff's Complaint, *Darryl Mason Jr. v. City of Portland*, United States District Court – Portland Division, Case No. 3:22-cv-00798 AR.

II

IT IS UNDERSTOOD AND AGREED that the payment made to the undersigned under this agreement is not to be construed as an admission of liability. The City of Portland expressly denies liability to the undersigned, or any other person for injuries or damages arising out of the aforementioned incident.

III

IT IS FURTHER UNDERSTOOD AND AGREED that this agreement releases the City of Portland from any and all claims arising out of the incident, or arising out of any cause of action related to the incident, including claims brought against the proceeds of any action filed relating to the incident, including, but not limited to, medical liens, attorney liens, hospital liens, Social Security Administration liens, Medicare liens, workers' compensation liens, liens of the State of Oregon Department of Human Services ("DHS"), liens of the Oregon Health Plan ("OHP") and all other liens against the above-described claims or causes of action at the time of execution hereof.

IV

A. The Parties also acknowledge any Medicare and Medicaid interest payable under this Agreement shall be the sole and exclusive responsibility of Darryl Mason, Jr. Darryl Mason, Jr. agrees that the duties stated in this paragraph are non-delegable and failure to perform such duties shall provide the City of Portland with a right to recover any monies paid due to the failure to satisfy Medicare's interests, including any additional expenses incurred and attorney fees. The Parties acknowledge and understand that the City of Portland will report any payment to a Medicare beneficiary in settlement of a claim under a liability insurance policy or self-Insurance to Medicare (CMS).

B. Darryl Mason, Jr. agrees and warrants that he¹ will satisfy any and all applicable Medicare, Medicaid, DHS, OHP, and any private insurer liens and third-party claims prior to receiving any

¹¹ Defendant uses the pronouns "he", "his" or "him" for Plaintiff [Darryl Mason Jr.] consistent with the pronouns indicated in Plaintiff's Complaint

portion of the settlement payment set forth in section I from the attorney, Matthew Philbrook. If Darryl Mason, Jr. fails to satisfy such liens, Darryl Mason, Jr. shall defend and indemnify the City of Portland, its agents, officers, employees, officials, and all other persons, firms, corporations or other entities from any and all claims arising out of such failure. More specifically, with respect to the interests of Medicare/CMS, Darryl Mason, Jr. represents and warrants that he has received no notice from Medicare/CMS asserting rights to any conditional payments relating to past medical care and treatment for Darryl Mason, Jr..

C. If applicable, Darryl Mason, Jr. shall provide a final payment letter to the City of Portland's Office of City Attorney indicating that the interests of Medicare/CMS have been resolved prior to receiving any portion of the settlement payment set forth in section I of this Agreement.

D. In consideration of the payments set forth in this Agreement, Darryl Mason, Jr. waives, releases, and forever discharges the City of Portland from any obligations for any claim, known or unknown, arising out of the failure of the City of Portland to provide for a primary payment or appropriate reimbursement pursuant to 42 U.S.C. § 1395y(b)(2)(B)(ii).

E. Darryl Mason, Jr. understands this settlement may impact, limit or preclude his right or ability to receive future Medicare/CMS benefits arising out of the injuries alleged, and nevertheless wishes to proceed with the settlement.

F. The parties have attempted to resolve this matter in compliance with both state and federal law, and have considered Medicare's interests. Darryl Mason, Jr. has concluded that a Medicare Set-Aside ("MSA") is not required or appropriate in this matter. It is not the intention of the parties to shift responsibility for payment of future medical expenses to Medicare pursuant to 42 U.S.C. § 1395y(b) or the Federal Government.

G. Should any person or entity not a party hereto challenge the validity of this Settlement Agreement, or any term thereof, pursue recovery of monies from the City of Portland or bring a claim or claims against the City of Portland arising out of 42 U.S.C. § 1395y(b) related to payment for items or services related to the injuries claimed in this action, Darryl Mason, Jr. shall provide to the City of Portland such cooperation and assistance as the City of Portland may reasonably request in order to resist such a challenge or defend such a claim.

V

THE UNDERSIGNED AGREES AND WARRANTS that all expenses incurred to date or which will be incurred in the future, which are related in any way to claims being released herein, have either been paid or will be paid from the proceeds of this settlement and that Darryl Mason, Jr. will hold the City of Portland, its agents, employees and assigns harmless from any claim for any such expense whenever incurred and, if any suit is filed against the City of Portland to collect such claim, Darryl Mason, Jr. will accept the tender of defense of any such claim, defend it at his expense and pay any judgment entered therein and agree to compensate the City of Portland for any expense or liability incurred as a result of the filing of such suit.

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VI

THE UNDERSIGNED HEREBY DECLARES that he has read this Release and Hold Harmless Agreement and that it is fully understood and voluntarily accepted for the purpose of making a full and complete settlement and compromise of any and all claims arising out of the above-described incident, in whatever legal form or theory he might assert, whether disputed or otherwise, and in particular including, but not limited to, those matters set forth in the complaint of Darryl Mason, Jr. in the United States District Court of Oregon, entitled:

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

DARRYL MASON, JR., an individual,

Case No.: 3:22-cv-00798 AR

PLAINTIFF,

v.

CITY OF PORTLAND, a municipal corporation, PORTLAND POLICE DEPARTMENT, a municipal department,

DEFENDANTS.

VII

IT IS EXPRESSLY UNDERSTOOD AND AGREED that this Release and Hold Harmless Agreement is intended to, and does, cover not only all known losses and damages, but any further losses and damages not now known or anticipated which may later develop or be discovered including all effects and consequences thereof.

VIII

THE TERMS SET FORTH HEREIN are contractual and not a mere recital.

IX

IT IS FURTHER UNDERSTOOD AND AGREED that this Release and Hold Harmless Agreement releases any and all claims for nondisclosure, fraud or misrepresentation and any and all claims for nondisclosure, fraud or misrepresentation in the inducement of this agreement.

X

THE UNDERSIGNED FURTHER STIPULATES AND AGREES that the above case may be dismissed with prejudice and without costs or attorney's fees to any party.

XI

This document is executed pursuant to the provisions of ORS 31.815 as a Covenant Not to Sue/Covenant Not to Enforce Judgment given in good faith, under which the Covenantor shall not enforce any judgment or judgments against the Covenantee arising out of events near SW 4th and Salmon, occurring on or about June 2, 2020, in Portland, Oregon and set forth in the Complaint bearing Case Number 3:22-cv-00798 AR. Covenantor agrees that upon entry of a final judgment in this matter that Covenantor may not collect from Covenantee any damages awarded to Covenantor, included but not limited to claims for contribution made by any party or third-party plaintiff, reallocation of damages to the Covenantee pursuant to ORS 31.610 and any claim for attorney fees whether statutory or otherwise. In the event a judgment is entered against Covenantee, Covenantor will promptly file a Full Satisfaction of Judgment as to the Covenantee within 30 days of entry of the judgment. In the event of a settlement with other parties, Covenantor will within 30 days of the settlement file a dismissal of all claims against Covenantee. If applicable, Covenantor shall give notice of the terms of this agreement to all required parties pursuant to ORS 31.815.

XII

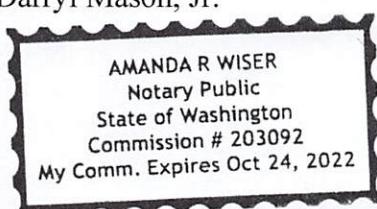
THE UNDERSIGNED FURTHER STIPULATES AND AGREES that he had the opportunity to review this agreement with an attorney of his choice and has either done that before signing or decided not to review the agreement with the lawyer. By signing below, the undersigned agrees that he has had the opportunity to read, review, and understand each term of this agreement.

DATED this 8 day of July, 2022.


Darryl Mason, Jr., Covenantor

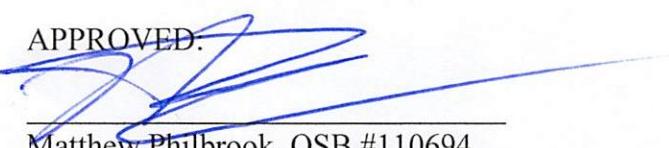
STATE OF OREGON)
County of Multnomah) ss.
Clark

This instrument was acknowledged before me this 8 day of July,
2022, by Darryl Mason, Jr.



Amanda Wiser
Notary Public – State of Oregon WA
Commission No.: 203092
Commission Expiration: 10/24/22

APPROVED.


Matthew Philbrook, OSB #110694
Attorney for Plaintiff